INDEX

PAGE

Statement 1
Motion 1
Brief on merits 3
Submitting briefs already filed 6
The alleged prior tax not imposed by the Legislature 7
Answering Respondent's brief 8
Ground III of Respondent's brief 9
Objection that ordinance deprives Respondent of due process of law 12
Objection that tax is not uniform 13
Ground II of Respondent's argument 14
Ground I of Respondent's argument 16
License distinguished from tax 18
Conclusion 21

CASES

Calaf vs. Furgurla, 232 U. S. 371 22
Cami, Municipal Com. of Finance vs. Central Victoria, Ltd., 30 P. R. Rep. 413 22
Christian vs. King Co. 239 U. S. 356 19
Cincinnati N. O. & T. P. R. Co. vs. Kentucky, 115 U. S. 252.. 21
José Benitez et al. vs. Carlota y Clemencia Gonzalez Lugo, (Decided Feb. 19th. 1923, No. 236) 22
Knowlton vs. Moore 178 U. S. 41, 63 14
Nadal vs. May 233 U. S. 447 21
New York ex. rel. Clyde vs. Gilcrist 262 U. S. 97.....
New York ex. rel. Troy Union R. Co. Nealy 254 U. S. 47....
Oil City vs. Oil City Trust Co. 151 Pa. St. 454, 25 Atl. 124, 31 A. S. R. 770 18
Patton vs. Brady 184 U. S. 608..... 15
Parsons vs. Bedford, 3 Pet. 433..... 21
People vs. Garzot, 24 P. R. Rep. 390..... 22
Presser vs. Illinois 116 U. S. 252 21
Security Trust Co. vs. Lexington 203 N. S. 333 13
Schell vs. Fauch 126 S. W. 562 22

the ordinance (R. 1), and if the levy be legal, the amount accrued thereunder became due on July 1st., 1922.

In this case the Municipality has enacted no ordinance purporting to repeal its levy as was alleged to have been done by Arroyo, and made the basis of a motion to quash the writ (No. 369); nor is the question before the Court, (if in fact such a motion is before the Court) complicated by the Insular levy imposed upon the manufacture of sugar by section 14 of Act No. 68 of the Second Session of the Tenth Legislature of Porto Rico, approved July 28th., 1923, being in effect section 49 of Act No. 85 of the Municipal law of 1919, reenected by Act. No. 9 of the Third Special Session of the Ninth Legislature of 1920, that the Municipal revenues shall consist, among others, of

(*f*) "Any other impost, excise or tax that may be levied by a two thirds vote of the Municipal Assembly,*provided the object or matter of taxation is not also the object or matter of taxation of any Federal or Income Tax*", because the sum due under the tax had accrued before the Insular levy was made.

In our brief opposing the motion to quash the writ in No. 369, it was pointed out at greater length which we here repeat in substance, that even though a tax on the process of manufacturing sugar might have disappeared from the field of Municipal taxation by the subsequent imposition of an Insular tax, the question or principle before the Court for decision is not limited to the power of the Municipality to impose such a tax upon the manufacture of sugar, but is whether all municipalities in Porto Rico have the power to impose such a tax-for regulation to supervise them to protect the public health and safety, and for revenue upon *all* factories operating within the towns and cities in Porto Rico other than those engaged in the manufacture of sugar.

We respectfully refer to the brief mentioned at page 37 under the sub-heading of "the Scope of the Question" and grounds Nos. 3 and 4 stated at page 2, and the concluding remarks on page 39.

With great diffidence we refer to a brief or record filed in another case or elsewhere in the same case, as we now do and later herein refer to, but these two cases (Nos. 369 and 370) have at least twice been decided together, the last by reference to the first and the records as now filed so rely upon each other that it would be difficult of not impossible to discuss one without reference to the other, and our lack of a clear understanding as to just what is before the Court, and the brief time at our command, forces us to appeal to the generosity of an indulgent Court to consider the question in this rather complicated way.

BRIEF ON THE MERITS.

The errors assigned are as follows:

(*a*) In holding that there had already been imposed a license tax upon the respondent herein for conducting the business of a sugar mill for the year 1921, when the Municipal Assembly of Carolina levied the tax upon the manufacture of sugar within the Municipality by the ordinance enacted February 17th., 1921, effective July 1st. 1921.

(*b*) Assuming that a license tax had already been imposed upon the respondent for the year 1921 for conducting the business of a sugar mill, the Circuit of Appeals erred in holding that the tax upon the manufacture of sugar imposed by ordinance of February 17th., 1921 effective after July 1st., 1921, was double taxation and therefore invalid.

(c) In holding that it was the intention of the Legislature of Porto Rico that any excise tax

should be levied by the Municipality should be one other than those enumerated in Act 26 of the Legislature of 1914 reenacted by the Legisture in 1920 (d) of section 9 of Act No. 9.

(*d*) In holding that the Municipality was not authorized to enact the ordinance of February 17th. 1921, by the Act of Congress of 1917 known as the Organic Act for Porto Rico, or by the Legislature of Porto Rico.

(*e*) In holding that the tax imposed under the ordinance of February 17th., 1921, including a tax upon the manufacture of sugar was a constituent element of a business already taxed by a license tax, and was therefore not effective.

(*f*) In reversing the judgment of the Supreme Court of Porto Rico which upheld the validity of the tax imposed by the ordinance of February 17th. 1921.

Discussing (a). The Circuit Court of Appeals reversed the judgment of the Supreme Court of Porto Rico (R.30) by a per curiam opinion reading:

"This case is governed by our opinion in No. 1617, Successors of C. & J. Fantauzzi vs Municipal Assembly of Arroyo, P. R., and the entry should be: The judgment of the Supreme Court of Porto Rico is reversed with costs to the appellant in this court, and the case is remanded to that court for further action not inconsistent with this opinion."

How the instant case could be reversed upon the ground upon which it appears the other case was reversed, we have never been able to understand, because of the fundamental difference in the records of the two cases. It is submitted that the facts in this case did not exist upon which the decision of the C.C.A. rested in the Arroyo case.

Examining the opinion of the Court delivered in the Arroyo case (R.76 of 369) it will be found, as we understand it, that the decision rests upon the belief that in the instant case the Municipality of Carolina had enacted a license tax upon the business of molasses and sugar mills of that Municipality and that same was in force when the tax levied by the ordinance of February 17. 1921 became effective. The record nowhere discloses such a fact; it was never contended below, as shown by the record, that the Municipality had enacted such a tax.

There is some evidence in the Arroyo case that the Municipality had enacted such a prior tax (R. 18 of No. 369) where it appears that the Respondent in that case applied on March 1st. 1921 for a certificate for an Industrial and Commercial License, know in Porto Rico as the "Patente" tax, and we pause to point out that in the Arroyo case (R. 18 of No. 369) there is nothing in the record of that case to show that the license was ever granted. It was applied for under the Municipal ordinance then in force providing for it, but the date of the application autedated the enactment of the ordinance of March 9th. 1921 by nine days. The license applied for was never granted that the record shows, because the tax under the ordinance of March 9th. 1921 within a few days became operative by the terms of which all ordinances and resolutions in conflict therewith were repealed (R. No. 369, p. 14, Sec 8) and there is nothing in the record to show that the Municipality of Arroyo collected or ever tried to collect the tax in force prior to that levied by the ordinance of March 9th. 1921, after the enactment of the ordinance.

But be that as it may as to the Arroyo case, in the instant case it is submitted that there is nothing in the record that remotely justified the assumption that any prior tax upon the business of a sugar mill or upon the manufacturing of sugar had been imposed by this Municipality.

Referring to assignment (e) in connection with (a) which may be argued together, we quote from the

opinion of the Court (R. 76 of No. 369) upon which statement we understand the Court bases its judgment of reversal in both cases:

"If the Municipality had not in a prior assessment reached the maximum provided in the Act of 1914 and an emergency later arose which required the collection of a larger tax it might, under the authority of the cases cited in the opinion of the Supreme Court of Porto Rico, lay an additional tax, which would not, with that previously laid, exceed the maximum authorized by the Act of the Legislature", and on the same page:

"Where, as in this case, a license has been imposed for carrying on the business of a sugar and molasses mill within the Municipality, we think no additional tax can be imposed upon the business of manufacturing sugar, one of the necessary elements of the general business."

If there be no evidence in the record that any other tax than that imposed by the ordinance of February 17th. 1921 had been imposed by the Municipality or was at the time in force, what is quoted above from the Court's opinion could have no application in the instant case, and we understand that the above stated grounds are those upon which the Court's decisions rest in both cases.

Submitting Briefs Already Filed.

In the short space of time within which this brief must be prepared, printed and travel to reach Washington, it will not be possible to argue the general principles in support of the legality of the tax supporting the assignments of error others than (a) and (e) already discussed, and to attempt a worthy refutation of the arguments made in Respondent's brief on the merits, just filed. We argued the question at length in the brief in support of the petitions for the writ in both cases, in the case of Municipality of Arroyo, P. R., Petitioner vs Successors of C. & J. Fantauz-

zi, Respondent, No. 986 October Term-1923—No. 369 October Term-1924, and briefly in support of the petition for the instant case. We beg leave of the Court to submit these briefs in support of the merits of the two cases, and also to call attention to the opinion of the Supreme Court of Porto Rico (R. 24) and (R. 44, 59 of No. 369), the Arroyo case, in addition to which we briefly attempt to answer some of the arguments made against the legality of the taxes imposed by the Municipalities.

THE ALLEGED PRIOR LICENSE TAX NOT IMPOSED BY THE LEGISLATURE.

To make it appear that such a tax was in existence at the time the tax was levied by the Municipalities, and that the latter was therefore double taxation, it has been contended that the license tax was levied by the Legislature of Port Rico, by Act No. 26 approved March 26th. 1914 alleged to have been in force when the ordinances herein referred to were enacted. Admitting that it was in force, the terms italicised by us make it clear that the act was not a levy by the Legislature but an authority given to the Municipalities in Porto Rico to make such a levy if they desired.

The title and pertinent sections read as follows:

"An Act *authorizing* the Municipalities of the Island of Porto Rico *to levy* and collect annual taxes to be used in their budgetary expenses, and for other purposes."

Section One. That the Municipal Councils of all the Municipalities of the Island of Porto Rico are hereby *authoried to levy and collect* under the provisions of this Act, on and from every person, firm, etc.

Section Two. That the business or industries upon which the taxes herein provided *may be levied* shall be the following:

> Group C. The business of sugar and molasses mills.

That in the instant case no evidence appears of a prior tax conflicting with the one under attack, has always been insisted upon by counsel for the Municipality, and was urged upon the attention of the Supreme Court of Porto Rico, which in regard thereto said:

(R. 24) "Appellant (petitioner here) also maintains that the power to impose a license tax was granted to the municipalities, but that there was no showing that the municipality in this case had exercised the power. Indeed appellant implies that it had not used the power. There is force in appelant's argument, but we prefer to base our decision on the more general lines of the Fantauzzi case."

It is evident from the language of the opinion of the C.C.A. above quoted, that it did not regard the license tax as a levy made by the Legislature, and (R.75) the Court says:

> "We think that the license tax imposed in accordance with the Act of 1914 was not a Federal or Insular tax; but being imposed by the municipality and paid into its treasury, it was a municipal tax."

This conclusion seems unquestionably to be in accord with the law above quoted. In the Arroyo case such a tax had been enacted by that Municipality, while in the instant case it does not appear that any such license tax over had, and the ordinance of both Municipalities enacting the tax here in question contained clauses repealing any ordinance or resolution in conflict with the tax by them imposed, and in neither record is there the slighest evidence that either Municipality thereafter collected or attempted to collect any other tax of the same or similar character.

ANSWERING RESPONDENT'S BRIEF.

Since writing the above we have had a little time to read Respondent's brief dated April 17th. 1925, just

received. Respondent seems to admit that no prior license tax was in force in this case, as we contended above. If we have correctly understood the basis of the decision of the C. C. A.—double taxation—then it would seem that Respondent admits that the theory upon which the Circuit Court of Appeals decided that the ordinance in the instant case was illegal, was a mistaken one, and now Respondent seeks to attack the ordinance upon other grounds.

Asking the Court to consider the briefs filed in support of the petitions for the writs in both cases and especially the unanimous judgment and opinion of the Supreme Court of Porto Rico (R. 44 of 369) where the matter is fully discussed, we pass to a somewhat hurried attempt to refute the three (3) propositions stated in Respondent's brief, which we present in their inverse order.

> III.—"As a levy on property the tax is invalid, because the ordinance imposes a burden which is not uniform, and deprives of due process of law."

The tax was regarded by the Supreme Court of P. R. as an excise, but as a property tax it is not open to the objections stated by Respondent.

Under section 49 of the Municipal Law of 1919, Acts of the Second Session of the Legislature of Porto Rico, page 710, under the title *"The Municipal Revenues Shall Consist of"*: section two thereof provides:

> "That for and during the fiscal year beginning the first day of July, 1919, and ending the 30th. day of June, 1920, and for every succeeding fiscal year, unless other wise provided by the Legislature of Porto Rico, the rate of the regular general tax prescribed in an act approved March 12th. 1908,... to be collected by the Treasurer of Porto Rico on behalf of the municipalities shall be eighty hundredths of one percentum

> for municipalities of the first class and ninety hundredths of one percentum of the second and third class."

and in subsection (*c*) of the second section, additional source of municipal revenue on property is provided, as follows:

> "Any surcharge of the tax on taxable property of the municipality, provided it shall be decided by two thirds of the municipal assembly. Said surcharge shall not exceed (1) one per cent in municipalities of the first and second class, and one half-in municipalities of the third class, computing therein any additional tax at present or hereafter authorized.
>
> Said surcharge shall be devoted solely to... the development of elementary education,... school houses and for teachers..."

Therefore the municipalities had authority to levy a special tax as a surcharge upon property within the municipality within the rate limitations above mentioned. It has not been shown that if the tax in question was a property tax levied upon sugar that the rate limits were exceeded. This might have been alleged and proven before the trial court; but as no evidence was taken and Respondent submitted the case on the pleadings, Petitioner having filed an answer denying every material allegation of the complaint except the fact that the ordinance was enacted, (R. 1, 7, 15), Petitioner is entitled to every presumption existing in favor of the regularity and legality of legislative enactment.

It will be observed from the ordinance itself that the fund to be raised by the tax were to be used

> "for the erection of inexpensive school buildings and living quarter for teachers in the communities; for the acquisition of lands which form such communities, the organization thereof and farm schools."

which are among the purposes for which funds were to be used, raised by special taxes by a surcharge on property. (Subsection (*c*) above.

It will be seen from this subsection that such a surtax was to be levied by the municipalities when believed to be needed by a twothirds vote of the members of the assembly, and there is no question that the ordinance did not receive the requisite vote.

The situation then was that the Legislature levied a property tax for the municipalities of eighty hundredths of one per cent for municipalities of the first class or ninety hundredths of one per cent for those of the second and third classes, to be collected by the Treasurer of Porto Rico (Section 2) supra; that in addition thereto the municipalities might levy a surcharge upon property provided it be done a two thirds vote of the members of the assembly subject to the rate limitation already mentioned, which is nowhere shown to have been exceeded.

It might be objected that the authority given by the Legislature to levy a surcharge upon property is at variance with (*f*) of section 49 the same law, reading:

> "Any other impost, excise or tax that may be levied by twothirds of the members of the Municipal Assembly, provided the object or matter of taxation is not also the object or matter of any federal or insular tax."

It is not easy to believe that the Legislature did not have in mind when it wrote (*f*), subsection (*c*) authorizing the surcharge upon property of section 2, when these are subsections of section 49 of the same law. It is clear that the qualification attached to the kind of taxes mentioned therein, "provided the object or matter of taxation is not also the object or matter of any federal or insular tax" was not intended to apply to the surcharge upon property, and besides the property tax imposed under section 2, supra, was not an insular tax, though imposed by the Legislature, but one im-

posed by it for the municipalities, as the Legislature might do under section 3 of the Organic Act of 1917.

Property therefore may be taxed by both the Insular and Municipal Governments within fixed rates, and Section 65 of the Municipal Law of 1919 provides for ready redress in the courts, as we shall later point out.

Objection that the Tax Deprives Respondent of Due Process of Law.

On pages 24 and 25 of Respondent's brief objection is made to the manner of collecting the tax; that no notice is given; that Municipal officers may investigate the accuracy of the reports to be rendered by Respondent; that no opportunity is provided for protest or objection or for recision of the acts of the officers of Petitioner; that no "grievance day" is provided.

Section 65 of the Municipal Law of 1919, Acts of the Second Session of the Ninth Legislature, page 720 reads as follows:

> "That on motion of the aggrieved party the courts of justice shall have jurisdiction,
>
> (*a*) To annul or review by writ of certiorari any legislative or administrative act of the assembly, council of administrative or commissioners, which infringes the constitutional rights of complainant or which is contrary to the Organic Act or the laws of Porto Rico;
>
> (*b*) To stay by injunction the execution of any ordinance, act, resolution or order which infringes rights guaranteed by the Constitution or insular laws;
>
> (*c*) To compel by writ of mandamus a compliance with ministeral duties by municipal officials;
>
> (*d*) To grant, by ordinary suit, compensation for damages, to parties injured by acts or omissions

of municipal officials through malice or inexcusable negligence or ignorance."

Fuller protection could not very well be afforded, and the above provisions meet the test laid down by the Supreme Court of the United States in Security Trust Co. vs. Lexington, 203 U. S. 323, at page 333, where it is said:

> "It is sufficient if the tax payers are given the right to appeal to the courts of law, and there to be heard and offer evidence as to the validity of the tax and the value of the property as finally fixed; or if as a matter of right they may sue to have the collection of the tax enjoined, with full opportunity to be heard, on the question of validity and the amount of the tax."

It will be observed that from the above section there exists a complete remedy by review, of the legislative or administrative acts of the assembly, council of administration or commissioners.

Objection That Tax is not Uniform.

The organic Act of 1917 provides in section two:

> "That the rule of taxation in Porto Rico shall be uniform."

This is to be the *rule*, but it could not mean, as a practical matter, that all taxes in the 65 municipalities shall be equal.

Such meaning strictly enforced, would leave no latitude to adjust tax collection to meet the varying requirements of the several municipalities. Were an inflexible rate fixed, and provision made, by the Legislature for the municipalities, and the needs of the municipalities varied, as they must of necessity do, in some there would be a surplus of income while in others a deficit; neither would there be left any oppor-

tunity or need for the exercise of discretion on the part of municipal officials. If a municipality needed a schoolhouse and a tax were required to be levied to build it, it would be helpless to do so and the school children would have to wait until their Municipality had persuaded every other municipality in Porto Rico to levy the same tax, or until the Legislature could be persuaded to levy the same tax for all the municipalities, some of which might not need such a building at all, and might at the time have a surplus of funds in their treasury.

To contend that Congress expected such a strict application of the rule of uniformity throughout all Porto Rico, regardless of individual municipal requirements, would be as impracticable as if Congress had adopted the cut and measurements for a suit of clothes to be worn by all male adults in Porto Rico, without reference to the difference existing in the size and proportions of different individuals composing that class. The rule is satisfied if it be uniform thoughout the jurisdiction of the legislative body enacting the tax, in which the purpose is for it to operate. Knowlton vs. Moore 178 U. S. 41, 83 to seq. and authorities therein cited; 26 R. C. L. 247; 37 Cyc. 733 et seq. We cannot conceive that Congress ever intended to take taxation out of the principles laid down by the authorities just cited, when any other plan would be so impossible of practical application.

> II.—"The clauses of the Municipal Law upon which alone the ordinance is based fail to comply with the requirement of the Organic Act that taxes for municipal purposes be provided and defined by the Legislature."

This objection was before the Supreme Court of Porto Rico, to meet which the Court so aptly replies that we quote that part of the opinion. (R. 49 of 369).

> "Sec. 3 of the Organic Act, supra, does not say, as suggested, that each and every tax to the im-

> posed must be expressly and specifically defined. If I say to a man that I want to reserve to myself certain rooms in my house but that he is free to occupy and possess any other part of that house, it is a complete definition and provision of the part of the house he is to occupy. There is no way known to us in logic or legislation that is more exhaustive of the field to be covered than a similar residuary provision, and this to a certain extent was the method of the Organic Act with regard to taxation inasmuch as in section 3 a prohibition was first placed on our Legislature by Congress and the rest of the field left open. There is no mistaking the territory covered. By section 49 (*f*) the municipality is to impose any tax previously imposed by the national or insular governments, but is free to impose any other tax. Whether this is a wise provision of the legislature is not a subject of judicial inquiry, provided the right to delegate the power of taxation to municipalities exists. Pattons vs. Brady, 184 U. S. 608; State vs. Irvin, 25 S. E. 430; State vs. Worth, 21 S. E. 204."

It would seem that the form and manner of provision and definition are unimportant, it being necessary only that the Legislature inform the municipalities in some understandable manner what tax they may or may not impose. To require the Legislature to express affimatively in a schedule the character of tax and object of taxation would have been impracticable if not impossible, for objects of taxation would and do differ in differ localities; they exist in some and do not exist in others, and certain latitude by general statement would have to be permitted to meet differing situations and to cover objects that the wisest and most painstaking legislators could not possible have forseen.

The C. C. A. found no objection to this form of provision and definition, and we think correctly stated the situation, in that part of its opinion (R. 75 of 369) where it said:

> "The fair inference from the inclusion of the power granted under subsection (*f*) is that it was inserted because the Legislature felt that, although it had made a very detailed and comprensive enumeration of the Act of 1914 of the businesses and industries which might be subject to a license tax by the municipality, yet by inadvertaince it might have made an omission of some which should pay such a tax, and that power should be granted to the municipality to levy such a tax by a two-thirds vote of the members of its assembly upon any business or occupation not enumerated."

I.—*"The legislature did not authorize the municipality to levy the tax."*

Respondent having admitted that the Municipality had never enacted a license tax authorized by the Legislature under Act No. 26 of 1914, and consequently there was no double taxation as held by the C. C. A., as we understand it, now urges that the enactment of such a prior tax is unimportant in a consideration of the validity of the ordinance under attack, because of the language of subsection (*f*) of section 49 of the Municipal law of 1919 reading:

> "Any other import, excise or tax that may be levied by two-thirds of the members of the Municipal assembly, provided the object or matter of taxation is not the object or matter of taxation of any federal or insular tax."

under which Respondent assumes the ordinance in question was enacted. It is urged that the word "other" excludes authority to enact such a tax upon the process of manufacturing sugar, because by Act No. 26 authority was granted to impose a license upon the business of a sugar and molasses mill; that the two—business and manufacturing—are the same and that "other" in the connection employed confines a

municipality to the levy of a tax imposed under (*f*) to one not appearing in the schedule just preceding subsection (*f*).

While the argument is ingenious it appears to overlook the fact that the tax in question may find authority as one levied as a surcharge upon property under (*c*) of section two, supra, and also overlooks the well marked distinction, and therefore difference, between a licence imposed for regulation under the Police power, and an excise levied for revenue, or for regulation and revenue. That the tax levied or that might be levied, under Act 26 of 1914, was a license seems clear. The application for a certificate had to be made quarterly in advance the obtaining of which was a condition procedent to being allowed to do business, and if not obtained, doing business without it by section 12 was made a misdemeanor. An examination of what could be collected under its provisions when the maximum amount was required produced a sum so insignificant as to make it clear that it was intended to cover only the Municipality's expense of supervision. The maximum amount that could be collected being only 25 cents on each Thousand Dollars of the volume of business transacted up to One Million Dollars and beyond that sum twelve and one half cents per $1000.00, and by the law it is called a license.

The difference between a license for regulation imposed under the Police power and an excise tax, is shown by 19 R. C. L. p. 947, par. 246 where an excise in its modern sense it defined.

> "The word has come to have a broader meaning and to include every pecuniary imposition created under the power of taxation which is not a burden laid upon persons or property, or in other words every charge imposed by public authority for the purpose of raising revenue upon the performance of an act, the enjoyment of a privalege or the engaging in an occupation."

The distinction is at length explained by par. 251, 19 R. C. L. p. 950.

17 R. C. L. p. 478, par. 7 is entitled:
License Distinguished from Tax. at p. 479 it is said:

> "Where the fee is imposed for the purpose of regulation and the statute requires compliance with certain conditions in addition to the payment of a prescribed sum, such sum is a licence proper, imposed by virtue of the police power."

At p. 480 it is said:

> "A license fee is in its nature an imposition on the right to use or dispose of property, to conduct a business, or to exercise a privalege... A tax does not imply a license. There is no necessary connection between the two. A business may be taxed and yet not licensed... A license is a tax only when revenue is the main purpose for which it is imposed.

In par. 252 of 19 R. C. p. 951 it is said:

> "Where a municipal regulation is adopted, which would be lawful if intended for one purpose and unlawful for another, the presumption is that the purpose was lawful unless the contrary clearly appears."

Citing Van Hook vs. Salom 70 Ala. 361, Am. Rep. 85; Schmidt vs. Indianapolis, 168 Ind. 631, 787; Oil City vs. Oil City Trust Co. 151 Pa. St. 80 N. E. 632, 120 A. S. R. 385, 14 L. R. A. (N. S.) St. 454, 25 Atl. 124, 31, 31 A. S. R. 770.

Referring to the opinion of a Judge of the local United States Court delivered on April 23rd. 1921, attached to Respondent's brief as appendix "E", page 36 of the brief and section 3 of the opinion we find it said:

> "The old classification of taxation into property, license, and excise tax would still seem to be controlling."

From the foregoing, assuming that the ordinance was enacted under (*f*) supra, it would seem clear that as an excise, it is a *different* tax from the license referred to, and falls within the provision (*f*) "Any *other* import, excise or tax..."

There is one other consideration to be noticed in connection with Respondent's argument which we have just endeavered to meet, and on page 17 of the brief where it is said that:

> "The disobedience by the legislature of the limitation imposed renders invalid the clauses of the Municipal Law under discussion"

referring to subdivision 4 of section 26 and subdivision (*f*) of section 49 of the Municipal law of 1919.

We think, as did the Supreme Court of Porto Rico, that the taxing power of a municipality in Porto Rico, once that its organization is perfected, as authorized by section 37 of the Organic Act of 1917, is not dependent solely upon a delegation of power from the Legislature, but possesses its taxing power for the same reasons that a municipality in any state or territory posesses them. (R. 50 of 369) citing Christian vs. King Country, 239 U. S. 356, to be considered with section 37 of the Organic Act of 1917.

Another consideration is the insistence in Respondent's brief that the powers granted by the Legislature to municipalities under subsection 4 of Act No. 26 of 1914 and (*f*) of section 49 of the Laws of 1919, are too broad and that Congress expected a closer supervision by the Legislature over the taxing power of the municipalities—in other words a highly centralized government by the Legislature to the prejudice of local self government.

This shows unfamiliarty with the history of our legislation. Prior to the enactment of the present Organic Act, and under the Foraker Act of 1900—there was in Porto Rico no elective senate and all the heads of the Departments were appointed by the President. The old Municipal law was correspondingly restrictive of local self-government. As a consequence of that situation severe criticism became general and persistent of the old Organic Act and the restrictions upon the municipalities, resulting in such a state of unrest as to find expression in an almost popular demand for independence. To meet this situation and to remove any just cause of complaint Congress enacted the present Organic Act which carried liberal provisions for local self-government which the Legislature consistently enacted into law by the enactment of the new Municipal law of 1919.

The construction of the Municipal and other legislation asked for by Respondent to evade the payment of its tax, calls for a construction of Municipal power of self-government which would result in a reversion to the situation as it stood before the Organic Act of 1917 and the new Municipal law of 1919 were enacted. The present legislation cannot be properly understood without a knowledge of the history of the legislation—Holy Trinity Church case, and that line of cases.

Instead of highly centralized Legislative supervision of taxation, in consonance with the new grant of a more liberal form of government received from Congress under the Organic Act of 1917, and following the forms and spirit of government in the United States, the Legislature, believing in the capacity of the people to fairly and wisely manage their local affairs, chose to give a liberal form of government to the municipalities, at the same time affording ample protection to property and industry by easy recourse to the courts, as is done by the liberal provisions of section 65 of the Municipal Law herein quoted. In this Court may take judicial knowledge of Porto Rican legislation it knows that the control of the courts

here is highly centralized. Except for the Justices of the Supreme Court all judges are appointed by the Governor, who is appointed by and holds office at the will of the President who also appoints the Justices of the Supreme Court. Appeals in all subordinate courts reach the Supreme Court. Any legislation enacted by the Legislature may be revised by Congress. We think that property and industry are amply protected without any such forced construction of the Municipal law as contended for by Respondent. The wisdom of Legislative policy is is not for the Courts, and when changes are thought to be needed application should be made to the Legislative branch of the government.

Conclusion.

In conclusion it is urged that the presumptions are in favor of the constitutionality and legality of the tax.

Singer Sewing Machine Co. vs. Brickell, 233 U. S. 313; Presser vs. Illinois, 116 U. S. 252; Parsons vs. Bedford, 3 Pet. 433; Cincinnati N. O. & T. P. R. Co. vs. Kentucky, 115 U. S. 321; United States vs. Coombs, 12 Pet. 72.

That taxation laws and decisions constitute a policy of local concern. At page 8 of Respondent's brief it is stated that the question rests upon the construction of a local statute. The C. C. A. stated that it thought the Legislature meant some thing different from what the Supreme Court of P. R. though it meant.

Being a territory we cannot invoke the principle that the construction of a local statute by the Court of last resort of the jurisdiction, constitutes a rule of local law binding upon federal appellant courts but on several occasions this Court has said that the decisions of the Supreme Court of Porto Rico were entitled to deference as to questions arising out of a system of jurisprudence proceeding from a foreign source. Nadal vs. May 233 U. S. 447 José Benitez Diaz et al. Carlota y Clemen-

tina Gonzalez Lugo (decided Feb. 19th. 1923, No. 236; Calaf vs. Furgural et al, 232 U. S. 371, and others.

Local tax laws and decisions which have developed into a fixed local taxing policy cannot be disturbed without causing great loss and confusion.

The principles involved in the question now before the Court have been decided by the Supreme Court of Porto Rico in at least three decisions: People vs. Garzot, 24 P. R. Rep. 215; Successors of C. & J. Fantauzzi vs. Municipal Assembly of Arroyo 30 P. R. Rep. 390; Cami, Municipal Commissioner of Finance vs. Central Victoria Ltd. 30 P. R. Rep. 413.

In New York ex. rel. Glyde vs. Gilcrist 262 U. S. at pago 97 the Court said:

"When we are dealing with a matter of local policy, like a system of taxation, we shall be slow to depart from their (local courts) judgment if there was no oppression or manifest wrong in the result."

Citing New York ex. rel. Troy Union R. Co. vs. Mealy 264 U. S., Schell vs. Fauche, 126 S. W. 562.

We pray that if any motion has been filed to quash the writ that it be denied, and that on the merits the judgment of the United States Circuit Court of Appeals for the First Circuit be reversed, with costs.

Respectfully submitted,

(Signed) *E. B. Wilcox,*
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